

REMARKS

INTRODUCTION:

In accordance with the foregoing, claims 3 and 11 have been canceled, and claims 1, 2, 10, and 12 have been amended. No new matter is being presented, and approval and entry are respectfully requested.

Claims 1, 2, 4, 5, 10, and 12 are pending and under consideration. Reconsideration is respectfully requested.

ENTRY OF AMENDMENT UNDER 37 C.F.R. §1.116:

Applicant(s) request(s) entry of this Rule 116 Response because:

(a) the rejected claims 3 and 11 have been canceled, thereby at least reducing issues in the event of an appeal;

(b) it is believed that the amendment of claims 1, 2, 10, and 12 further clarifies the inventions and puts this application into condition for allowance;

(c) the amendment(s) were not earlier presented because the Applicant(s) believed in good faith that the cited prior art did not disclose the present invention as previously claimed, and Applicant only had a first opportunity to review the Examiner's detailed comments on the cited prior art when first presented in this final office action;

(d) the amendment(s) of claim(s) 1, 2, 10, and 12 should not entail any further search by the Examiner since no new features are being added or no new issues are being raised; and

(e) the amendment(s) do not significantly alter the scope of the claims and place the application at least into a better form for purposes of appeal. No new features or new issues are being raised.

The Manual of Patent Examining Procedures sets forth in §714.12 that "[a]ny amendment that would place the case either in condition for allowance or in better form for appeal may be entered." Moreover, §714.13 sets forth that "[t]he Proposed Amendment should be given sufficient consideration to determine whether the claims are in condition for allowance and/or whether the issues on appeal are simplified." The Manual of Patent Examining

Procedures further articulates that the reason for any non-entry should be explained expressly in the Advisory Action.

OBJECTIONS TO THE DRAWINGS:

A replacement sheet for FIG. 1 has been submitted herewith to resolve any outstanding objections to the drawings. Reconsideration and withdrawal of the outstanding objections to the drawings are respectfully requested.

REJECTION UNDER 35 U.S.C. §112:

In item 5 of the Office Action, at page 2, claims 2-4 were rejected under 35 U.S.C. §112, first paragraph, for the reasons set forth therein. This rejection is traversed and reconsideration is requested.

By this Amendment, claim 2 is amended to remove the open term "comprise." Amended claim 2 reads, in relevant part, "[t]he pedal device according to claim 1, wherein said pair of straight guides are positioned" Thus, the closed language reflects the support provided by pages 23, et seq. of the specification. Claim 3 has been cancelled. Accordingly, Applicant respectfully requests that these rejections of pending claim 2 and claim 4 depending thereupon be withdrawn.

In item 7 of the Office Action, at page 4, claims 2-4 were rejected under 35 U.S.C. §112, second paragraph, for the reasons set forth therein. This rejection is traversed and reconsideration is requested.

As discussed *supra*, amended claim 2, absent the open term "comprise," recites "said pair of straight guides." Thus, the "said pair of guides" consists of a pair of guides only, and includes no additional elements. Accordingly, Applicant respectfully requests that these rejections to pending claim 2 and claim 4 depending thereupon be withdrawn.

REJECTION UNDER 35 U.S.C. §102(b):

In item 8 of the Office Action, at page 4, claims 1, 5, 10, and 11 were rejected under 35 U.S.C. §102(b) in view of U.S. Patent No. 4,875,385 to Sitrin. This rejection is traversed and reconsideration is requested.

On page 13 of the Office Action, the Examiner noted that “when the operating portion 22 of Sitrin moves forwardly, i.e., when the pin 32 moves in a forward/upward direction in the Exhibit 2, the portion 22 also moves upward vertically as seen by the dashed lines (phantom position of the portion 22 in Fig. 2.” Applicant respectfully submits that the forwardly movement of the operating portion 22 of Sitrin is in the rearward direction in relation to the direction of the vehicle.

In contrast to the operating portion of Sitrin, which the Examiner describes as moving upward, the operating portion of amended claim 1 moves downward rather than upward when moved toward the rear of the vehicle. Further, slots 12d and 12e of Sitrin, which guide the movement of the pedal forward and rearward, are parallel. Applicant respectfully submits that the slots recited for the invention of amended claim 1 are not parallel, further distinguishing the claimed invention. Additionally, this provides an advantage not taught or suggested by Sitrin, because the operating portion of the present claimed invention is accessible to operators of a wide range of heights.

Claim 1, as amended, recites:

[the] pair of guides consist of a pair of straight guides which are formed and positioned such that the extension lines of said straight guides intersect each other such that a vertical position of said operating portion is lowered as said operating portion is moved toward the rear of the vehicle, parallel to said longitudinal direction.

Similarly, amended claim 10 recites:

[the] pair of guides are formed and positioned such that an operating surface of said operating portion is gradually inclined while the vertical position of said operating portion is lowered as said operating portion is moved toward the rear of the vehicle, parallel to said longitudinal direction.

Accordingly, Applicant respectfully submits that amended claim 1 and claims 5 and 10 depending thereupon patentably distinguish over Sitrin. Claim 11 has been

cancelled. Thus, Applicant respectfully requests that the rejections of pending claim 1, and claims 5 and 10 depending thereupon be withdrawn.

REJECTION UNDER 35 U.S.C. §102(e):

In item 9 of the Office Action, at page 6, claims 1, 2-4, 5, and 10-12 were rejected under 35 U.S.C. §102(e) in view of U.S. Patent No. 6,367,348 to Toelke, et al. This rejection is traversed and reconsideration is requested.

On page 18 of the Office Action, the Examiner asserts that, if one follows the teachings of Toelke to reorient slots 28 and 30 (shown in FIGS. 1 and 2) to become inclined (as shown in FIG. 14), one would have a pedal device substantially identical to that shown in Applicant's FIGS. 1 and 2. While Toelke teaches that the guides in the first and third embodiments (FIGS. 1-8 and 10-12) can be inclined slots, like the second, fourth, and fifth embodiments (FIGS 1-8 and 13-18), Toelke fails to teach or suggest slots inclined in a way such that the operating portion of the pedal is permitted to moved downward. Instead, the inclined slots of Toelke permit horizontal motion of the pedal arm.

The first embodiment of Toelke teaches that the slots of the first embodiment are parallel and horizontal (col. 5, lines 5, 8-9), and that "the pedal 16 travels in a substantially linear and horizontal path" (col. 9, lines 15-16) while the pedal "generally remains at the same height" (col. 9, line 18).

The slots of the second embodiment of Toelke are non-parallel and inclined downward and in a rearward direction. The slots, however, are shaped such that the pedal moves along a substantially linear horizontal path (col. 9, lines 60-65). Additionally, "the orientation of the pedal somewhat changes as it moves along its substantially linear horizontal path" (col. 10, lines 8-10) so that the package size of the control pedal 102 can be optimized because the length of the upper pedal arm in the forward and rearward directions is significantly reduced (col. 10, lines 10-15).

The descriptions of the fourth embodiment of Toelke, referred to in FIG. 14 attached to the Office Action as Exhibit 2, teach a pedal substantially similar to the first and second embodiments. The pedal differs in that each of the upper and lower pedal arms have one of the

pair of slots formed therein, and each have one of the pins secured to the integrated slot (col. 12, lines 26-34). Further "the control pedal 300 is adjusted substantially as described in retail hereinabove with regard to the first and second embodiments" (col. 12, lines 35-36). Thus, the inclination of the slots which define the movement of the operating portion disclosed in the fourth embodiment is as described in the first and second embodiments.

Regarding the fifth embodiment, Toelke teaches a control pedal substantially similar to the third embodiment, "except that the guide pin slot 28 is formed in the upper pedal arm 12, rather than the mounting bracket 20, and the guide pin 36 is secured to the mounting bracket 20, rather than the upper pedal arm 12. Formed in this manner, the upper pedal arm 12 and the mounting bracket 20 each have one of the slots 28, 30 formed therein and each have one of the pins 36, 38 secured thereto." (col 12, lines 43-52). In the third embodiment, the slots are again "substantially straight and horizontal" (col 11, lines 16-17) and "are sized and shaped for cooperation with the upper pedal arm 12 for substantially linear forward/rearward movement of the pedal" (col. 11, lines 18-21).

Thus, even if the inclined slots of the second, fourth, and fifth embodiments are combined with the pedal device of the first and third embodiments of Toelke, Toelke does not teach or suggest a pedal device whose operating portion moves downwardly, as claimed by the present invention. Moreover, Toelke also fails to teach or suggest any technical advantage provided by the downward movement of the operating portion, which is made possible by inclining the slots. The present invention, however, teaches that the operating portion of the pedal device can be easily operated, regardless of the height of the operator. For example, the inclined slots provide an advantage for drivers who have shorter legs and smaller feet, by allowing the operating portion of the pedal to be closer to the seat and closer to the floor of the vehicle. Thus, a shorter driver with smaller feet is not forced to use his or her tiptoe or lift his or her heel off the floor in order to depress the pedal. Instead, such a driver can apply force to the pedal with the area of the sole best suited for the application of such force. Accordingly, Applicant respectfully requests that the rejections of pending claims 1, 2, 4, 5, 10, and 12 be withdrawn.

CONCLUSION:

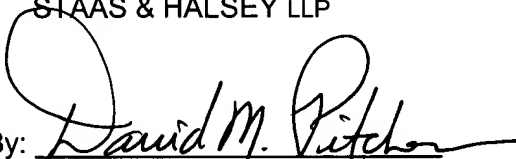
In accordance with the foregoing, it is respectfully submitted that all outstanding objections and rejections have been overcome and/or rendered moot. And further, that all pending claims patentably distinguish over the prior art. Thus, there being no further outstanding objections or rejections, the application is submitted as being in condition for allowance which action is earnestly solicited. At a minimum, this Amendment should be entered at least for purposes of Appeal as it either clarifies and/or narrows the issues for consideration by the Board.

If the Examiner has any remaining issues to be addressed, it is believed that prosecution can be expedited and possibly concluded by the Examiner contacting the undersigned attorney for a telephone interview to discuss any such remaining issues.

If there are any underpayments or overpayments of fees associated with the filing of this Amendment, please charge and/or credit the same to our Deposit Account No. 19-3935.

Respectfully submitted,

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